UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

FEB - 4 2013

BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John T. Wilson
Senior Vice President, General Counsel and
Corporate Secretary
Quality Distribution, Inc.
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Tampa, FL 33610

Eric Rothenberg, Esq.
O'Melveny & Myers LLP
Times Square Tower
7 Times Square
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Re: Final Decision on Formal Dispute Resolution
Chemical Leaman Tank Lines, Inc. Superfund Site, Logan Township, New Jersey

Dear Mr. Wilson and Mr. Rothenberg:

This letter represents the final decision of the Director of the United States Environmental Protection Agency ("EPA") Region 2, Emergency and Remedial Response Division, resolving the formal dispute raised by Quality Distribution, Inc. ("QDI") concerning Bill No. 272116S050 (hereinafter, the "OU1 Bill") and Bill No. 272116S051 (hereinafter, the "OU2/OU3 Bill") regarding Future Response Costs pursuant to consent decrees resolving claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, ("CERCLA") 42 U.S.C. § 6901 *et seq.*, in connection with the Chemical Leaman Tank Lines, Inc. Superfund Site ("Site'), located in Logan Township, Gloucester County, New Jersey.

In September 2011, EPA issued the OU1 and the OU2/OU3 Bills to QDI seeking the reimbursement of response costs incurred by the Agency in overseeing response work performed by QDI at the Site. QDI contested certain of the response costs sought by EPA in those bills and eventually initiated the formal dispute resolution procedures available to it pursuant to the consent decrees governing the payment of Future Response Costs sought in the OU1 Bill and in the OU2/OU3 Bill. After carefully considering the information provided by the Parties in this dispute, I have determined that EPA is entitled to recover the full amount sought in the OU1 Bill and the full amount sought in the OU2 /OU3 Bill. I am therefore directing QDI to pay EPA $627,639.93 in outstanding OU1 costs as well as $181,212.20 in outstanding OU2/OU3 costs, plus interest.

Background

On September 26, 2011, EPA submitted the OU1 Bill to QDI seeking the reimbursement of $853,248.06 in oversight costs incurred by EPA relating to operable unit one ("OU1") of the Site. Also on September 26, 2011, EPA issued the OU2/OU3 Bill to QDI seeking the reimbursement of $236,436.95 in oversight costs incurred by EPA relating to operable units two ("OU2") and three ("OU3") of the Site.

On October 19, 2011, QDI sent EPA a letter requesting additional documentation supporting the amounts sought in the bills issued by EPA. On November 22, 2011, EPA and QDI entered into a confidentiality agreement to protect certain business information in the supporting documentation QDI requested. On December 12, 2011, EPA sent the additional supporting documentation to QDI. The Parties then engaged in a series of communications, both oral and written, in an effort to resolve QDI's objection to certain costs in the OU1 and OU2/OU3 Bills. On February 15, 2012, QDI paid $225,608.13 of the $853,248.06 requested by EPA in the OU1 Bill, and $55,224.75 of the $236,436.95 requested by EPA in the OU2/OU3 Bill.

Over the next several weeks, QDI and EPA continued their efforts to resolve the cost dispute. But those efforts were unsuccessful. On March 28, 2012, QDI, at the insistence of EPA, deposited the sum of $820,000 in an interest-bearing account at Bank of America. Thereafter, on March 30, 2012, QDI submitted to EPA a "Revised Statement of Position and Request for Formal Dispute Resolution" ("QDI SOP"). EPA responded on March 30, 2012, with its "Statement of Position" ("EPA SOP"). On May 11, 2012, QDI submitted a "Statement in Reply" ("QDI Reply").

On June 14, 2012, at QDI's request, members of my staff and I met with representatives of QDI at EPA's New York City offices. At that meeting, I provided QDI with the opportunity to explain why it should not be required to pay the full amount sought by EPA in the OU1 and the U2/OU3 Bills.

Consent Decrees

On September 5, 1991, the United States District Court for the District of New Jersey entered a Consent Decree in Civil Action No. 91-2637(JFG) (hereinafter, the "1991 Decree") relating to OU1 of the Site. The 1991 Decree settled certain cost recovery claims the United States had against QDI concerning OU1, including claims for OU1 "Future Response Costs" incurred by the United States. The OU1 Bill was issued by EPA pursuant to the 1991 Decree.

On February 2, 2011, the United States District Court for the District of New Jersey entered a Consent Decree in Civil Action No. 1:10-cv-05098-NLH-KMW (hereinafter, the "2011 Decree") relating to OU2 and OU3 of the Site. The 2011 Decree settled certain cost recovery claims the United States had against QDI concerning OU2 and OU3 of the Site. The OU2/OU3 Bill was issued by EPA pursuant to the 2011 Decree.

A consent decree is the result of the parties' negotiations and represents their agreement and as such must be honored. *See United States v. Witco Corp.*, 76 F. Supp. 2d 519, 525 (D. Del. 1999) ("A consent decree is a court order that embodies the terms agreed upon by the parties as a compromise to litigation."); *United States v. Chemical Leaman Tank Lines, Inc.*, No. 91-2637 (JFG), 1994 U.S. Dist. LEXIS 11489, at *12 (D.N.J. Mar. 30, 1994) ("the Government's authority comes from the Consent Decree itself, which is the embodiment of the parties' agreement").

OU1 Costs

QDI is contesting approximately $627,639.93 of the Future Response Costs sought by EPA in the OU1 Bill. Pursuant to the 1991 Decree, QDI "shall reimburse the United States for all Future Response Costs not inconsistent with the National Contingency Plan incurred by the United States." 1991 Decree, § XII, ¶ B. Future Response Costs "shall mean all costs, including, but not limited to, indirect costs, that the United State incurs in overseeing" OU1 of the Site. *Id.* § IV, ¶ I. EPA is responsible for sending QDI "a bill with supporting documentation" and QDI is required to "make all payments within 45 days of [its] receipt of each bill requiring payment." *Id.* § XII, ¶ B.

QDI may, however, contest "any Future Response Costs...if it determines that the United States has made an accounting error, or if it allege[s] that a cost item that is included represents costs that are inconsistent with the NCP." 1991 Decree, § XII, ¶ C. The dispute resolution procedures in Section XII, Paragraph C of the 1991 Decree and the procedures in Section XIV (Dispute Resolution) of the 1991 Decree "shall be the exclusive mechanisms for resolving disputes regarding [QDI's] obligation to reimburse the United States for its Future Response Costs." *Id.*

Since QDI does not claim that EPA has made an accounting error, it must demonstrate that a cost item in the OU1 Bill reflects an inconsistency with the NCP. QDI has failed to establish any such inconsistency.

Cost Documentation

QDI argues that EPA's cost documentation is inconsistent with the NCP. However, as QDI recognizes, the NCP does not contain any specific standard concerning the documentation of costs, but rather, merely requires that "in general" the documentation be "sufficient to provide" an "accurate accounting" of "costs incurred for response actions". 40 C.F.R. § 300.160(a)(1). *See United States v. E.I. Du Pont De Nemours & Co., Inc.*, 341 F. Supp. 2d 215, 244 (W.D.N.Y. 2004) ("the NCP does not define 'accurate accounting' or otherwise elaborate on what is meant by 'sufficient.' ") (citing *United States v. W.R. Grace & Co.*, 280 F. Supp. 2d 1149, 1180 (D. Mont. 2003)), *aff'd United States v. W.R. Grace & Co.*, 429 F.3d 1224 (9th Cir. 2005); *United States v. Chrysler Corporation, et al.*, 168 F. Supp. 2d 754, 769 (N.D. Ohio 2001) ("The NC Plan does not contain any specific standards concerning the documentation of costs.").

While QDI contends EPA documentation lacks sufficient detail, "courts have consistently 'rejected arguments that the lack of descriptive information on a time sheet or travel voucher regarding the underlying task the employee performed invalidates the documentation.' " *Dupont,*

341 F. Supp. 2d at 245 (quoting *W.R. Grace,* 280 F. Supp. 2d at 1181); *See* also *United States v. Findett Corp.,* 220 F.3d 842, 848-850 (8th Cir. 2000); *California v. Neville Chemical Company,* 213 F. Supp. 2d 1134, 1138-1140 (C.D. Cal. 2002); *United States v. Bell Petroleum Servs.,* 734 F. Supp. 771, 781 (W.D. Tex. 1990).

EPA provided supporting documentation to QDI. The OU1 Bill included a narrative summary and an Oversight Report, and those documents provide information supporting the costs sought by EPA in the bill. In addition, at QDI's request, EPA provided further supporting documentation to QDI in the form of a "SPIDER" disc. EPA SOP, at 5. QDI acknowledges that it received vouchers concerning the U.S. Army Corps of Engineers ("Corps") that included "general work descriptions" and some that included "expanded" work descriptions. QDI SOP, at 4. But QDI argues that such documentation is not sufficiently specific. QDI complains that the documentation is not sufficiently "itemized" and does not include a "description of work performed...on a diary entry basis." QDI Reply, at 3; QDI SOP, at 4, respectively. Yet QDI fails to cite a single case in which such specific description of tasks performed by a particular employee at a particular time is required by the NCP. *See Neville,* 213 F. Supp. 2d at 1139 ("Neville has not cited any case where a specific description of exactly what task the employee performed at a particular time was held required by 40 C.F.R. § 300.160(a)(1).").

QDI points out that in several cases upholding the sufficiency of EPA's cost documentation, the documentation "was corroborated" by additional evidence in litigation such as supporting affidavits and testimony. QDI SOP, at 4; QDI Reply, at 3. But that does not imply that such corroborating evidence is required under the "general" NCP requirements. 40 C.F.R. § 300.160. To the contrary, the Court in *Chrysler* held that the cost "summaries" submitted by the government agency in support of its claim were both "adequate and accurate." *Chrysler*, 168 F. Supp. 2d at 776. The summaries relied on by the Court did not include the "diary entries descriptions" or other sort of specificity QDI seeks. QDI Reply, at 3. The level of specificity demanded by QDI is not required by the NCP's "general" documentation provision.

The lack of such "corroboration" evidence merely reflects the distinction of the procedural postures of the judicial cases cited by QDI (QDI Reply, at 3) and the administrative proceedings here. For purposes of this proceeding, the parties have submitted sufficient evidence for me to conclude that EPA has met the NCP documentation standard.

Moreover, even if QDI could establish that EPA's documentation was inconsistent with the NCP that in itself would not be enough to establish that a cost item in the OU1 Bill reflects an inconsistency with the NCP, as required by the 1991 Decree.

Indirect Costs

QDI claims that EPA is not entitled to recovery certain response costs because they reflect "double application of 'overhead' surcharges." QDI SOP, at 4. This claim is without merit.

Both the 1991 Decree and CERCLA permit EPA to recover its indirect costs. The 1991 Decree defines Future Response Costs to include "indirect costs" incurred by the United States in overseeing OU1 response work. 1991 Decree, § IV, ¶ I. Likewise, CERCLA allows EPA to

recover its indirect costs. *See W.R. Grace*, 280 F. Supp. 2d 1149, 1184 (D. Mont. 2003) ("Indirect costs, like direct costs, are recoverable under CERCLA."); *United States v. R.W. Meyer, Inc.*, 889 F.2d 1497, 1503 (6th Cir. 1989), *cert. denied*, 494 U.S. 1057 (1990) ("indirect costs are part and parcel of all costs of the removal action, which are recoverable under CERCLA.").

Indirect costs are recoverable by EPA because they are incurred by the Agency in support of the Superfund program, which is necessary for response actions at particular sites. EPA SOP, at 6. Indirect costs "are real costs that are necessary to operate the Superfund Program and to support cleanup efforts at specific sites, but that cannot be linked directly to the efforts at any one particular site." *Meyer*, 889 F.2d at 1503.

EPA uses a four-step methodology to calculate its indirect costs for a particular site: "1) identify the pool of indirect costs for Superfund sites within each EPA region; 2) identify the allocation base, or the total amount of site-specific direct costs incurred within each EPA region; 3) compute the indirect rate; and 4) apply the indirect rate to the particular Superfund site in question." *W.R. Grace* F. Supp. 2d 1149, at 1168. This four-step methodology complies with the Statement of Financial Accounting Standards No. 4, which is the standard applicable to EPA, and has been upheld by the courts. *See W.R. Grace* 429 F.3d 1224, at 185-186.

QDI does not claim that EPA failed to apply the four-step methodology to calculate its indirect costs, nor does it claim that there is a mistake in EPA's calculation. Rather, QDI merely states that the Corps' charges include "overhead" costs that are "subject to EPA Region 2's indirect rate." QDI SOP, at 4. QDI claims that it has, therefore, been "double-billed" by EPA. Yet, QDI fails to cite any case holding that such an application of EPA's indirect rate amounts to double-billing or is otherwise inappropriate.

QDI appears to be arguing that EPA's indirect costs are identical to or overlap with the overhead costs incurred by the Corps. However, QDI offers no evidence to support such a claim. QDI has failed to submit any information or documentation showing that the Corps' overhead costs are the same as EPA's indirect costs. Therefore, there is no basis for me to conclude that EPA is not entitled recover its indirect costs.

OU2/OU3 Costs

QDI is contesting $181,212.20 of the Future Response Costs sought by EPA in the OU2/OU3 Bill. The 2011 Decree provides that QDI "shall pay all Future Response Costs not inconsistent with the NCP." 2011 Decree, ¶ 55. Future Response Costs are "all costs, including, but not limited to, direct and indirect costs, that the United States incurs" in overseeing OU2 response work, and include "all costs" incurred by the United States "after January 31, 2010, in connection with the OU3 remedy at the Site." 2011 Decree, ¶ 4.

QDI "shall make all payments within 30 days of [its] receipt of" a bill from EPA requesting payment of Future Response Costs. 2011 Decree, ¶ 55.a. QDI may contest any Future Response Costs billed by EPA only "if it determines that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if [it] believe[s] EPA

incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP." 2011 Decree, ¶ 57. In addition, the dispute resolution procedures in Paragraph 57 of the 2011 Decree and the procedures in Section XIX (Dispute Resolution) of the 2011 Decree "shall be the exclusive mechanisms for resolving disputes regarding [QDI's] obligation to reimburse the United States for its Future Response Costs." *Id.*

QDI does not claim that the Agency has made a mathematical error, nor does it claim that EPA is seeking the reimbursement of costs that fall outside the definition of Future Response Costs. Therefore, QDI must demonstrate that EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision of the NCP. QDI has not made such a showing. In fact, QDI does not argue that an EPA action was taken inconsistent with a specific provision of the NCP. Instead, QDI claims that "the parties had a side letter exchange in August 2010" which "served as a material inducement for QDI's entry" into the 2011 Decree. QDI SOP, at 2. This argument is without merit for several reasons.

The August 2010 email is extrinsic evidence that should not be considered in construing the 2011 Decree's terms. The U.S. Supreme Court has held that "[c]onsent decrees are entered into by parties to a case after careful negotiation has produced agreement on their precise terms." *United States v. Armour & Co.*, 402 U.S. 673, 681 (1971). Therefore, "the scope of a consent decree must be discerned within its four corners, and not by reference to what might satisfy the purposes of one the parties to it." *Id.* at 682.

It is well established that if the plain language of a federal consent decree is clear, it must be interpreted within its four corners, and that extrinsic evidence may be considered only if it's relevant to resolve ambiguity in the consent decree. *Nehmer v. U.S. Department of Veterans Affairs*, 494 F.3d 846 (9th Cir. 2007); *United States v. Asarco Inc.*, 430 F.3d 972 (9th Cir. 2005); *United States v. Chromolly*, 158 F.3d 345, 350 (5th Cir. 1998) ("[The Defendant's] eleventh hour attempt to read into the consent decree provisions not expressed therein is not acceptable"). Only when a term is ambiguous will a court consider extrinsic evidence. *See Rumpke of Indiana, Inc. v. Cummins Engine Company, Inc.*, 107 F.3d 1235, 1243 (7th Cir. 1997) (CERCLA decree); *United States v. Charter International Oil Company*, 83 F.3d 510, 519 (1st Cir. 1996) (CERCLA decree).

In this case, QDI has not established that the terms in the 2011 Decree regarding Future Response Costs are ambiguous or that the 2010 email is relevant for resolving any such ambiguity. To the contrary, the provisions concerning Future Response Costs are clear. *See* 2011 Decree, ¶ 55. Therefore, there is no basis for looking to extrinsic evidence, and the August 2010 email should be disregarded.

Again, the 2011 Decree requires payment of "all Future Response Costs not inconsistent with the NCP." 2011 Decree, ¶ 55 (emphasis added). The 2011 Decree does not cap the U.S. recovery at some "substantial" amount as QDI argues that the 2010 email requires. Having failed to negotiate the inclusion of a cap on EPA's recovery of Future Response Costs in the 2011 Decree, QDI may not now impose its preference unilaterally after the fact. *See United States v. Atlas Minerals and Chemicals, Inc.*, 851 F. Supp. 639, 651 (E.D. Penn. 1994) ("a court should not rewrite contract for the parties"); *First Nationwide Bank v. United States*, 48 Fed. Cl. 248, 262-

263 (Ct. Cl. 2000) (court refused to imply an obligation to fully reimburse defendants where an agreement between the parties did not provide for full reimbursement); *Ralph Remus v. Amoco Oil Co.*, 794 F.2d 1238, 1242 (7th Cir. 1986) (holding that defendant could not modify contract by changing financing method in effect at time contract was made).

The 2011 Decree provides that "[t]his Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties regarding the settlement embodied in the Consent Decree. The Parties acknowledged that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree." 2011 Decree, ¶ 113.

QDI concedes that a merger clause creates a presumption that the writing creates the final agreement between the parties. QDI Reply, at 2 (citing *Carolina First Bank v. Stambaugh,* No. 1:10cv174, 2011 WL 6217409, at *8 (W.D.N.C. 2011). In order to rebut that presumption, "the claimant must establish the existence of fraud, bad faith, unconscionability, negligent omission or mistake in fact." *Id.* QDI does not offer evidence sufficient to rebut this presumption. Instead QDI poses a hypothetical: "if EPA is now suggesting that it proffered the [August 2010 email] knowing it would seek to avoid the same under the merger clause, it would appear that the Agency engaged in fraudulent inducement." QDI Reply, at 2. But QDI offers no evidence of any such "knowledge."

First, the 2010 email in not a binding "agreement" or "commitment" by the United States to limit its recover of response costs. The email does not contain those terms. To the contrary, the 2010 email merely expresses EPA counsel's then-current "belie[f]" that "Future OU2 Response Costs," incurred after March 15, 2010, would not be, "substantial" "[i]n comparison to" the $1.93 million in OU2 past response costs.

QDI offers no evidence that EPA counsel did not believe that projection. Furthermore, QDI fails to establish that the projection was wrong. Contrary to QDI's characterization of the Bill as an "OU2 Bill," the Bill actually includes costs for both OU2 and OU3. *See* OU2/OU3 Bill. In fact, the OU2 component of the Bill was for only $170,031.50: the remaining $66,405.45 was for OU3. *Id.* This approximately $170,031.50 was not for a "one year period" as QDI claims, but rather for an eighteen-month period, from March 16, 2010 through August 31, 2011. *See* Oversight Report, enclosed with the OU2/OU3 Bill. More importantly, the OU2 Future Response Costs incurred after March 15, 2010 ($170,031.50) *are less than one-tenth* of the referenced OU2 response costs incurred before that date ($1.93 million). Thus, QDI's claim that the amount in the OU2/OU3 Bill is somehow inconsistent with, or "in gross derogation" of, the 2010 email is without merit.

For similar reasons, QDI's self-serving "Certificate" by its own attorney of May 11, 2012, should be disregarded. In this Certificate, QDI counsel asserts that counsel for the United States "suggested" that QDI "should not be concerned" about future OU2 oversight costs because those costs would be "minimal" and that EPA would provide a "side letter" to "substantiate" its "representations" that future OU2 costs "would not be of a material nature." Certificate of Eric B. Rothenberg, ¶¶ 5, 6. However, as discussed above, the only thing that the 2010 email "substantiates" is EPA counsels then-current belief in a projection that future OU2 costs would

not be "substantial" in comparison to past OU2 response costs. EPA counsel's belief was not a binding agreement by the United States to limit its recovery of Future Response Costs, and QDI's attorney "Certificate" does not make it otherwise.

Therefore, neither the 2010 email nor the attorney Certificate constitute or evince any binding agreement by the United States limiting its ability to recover *all* Future Response Costs pursuant to the 2011 Decree. Both the 2010 email and the Certificate are inapposite and must be disregarded.

Reasonable Costs

QDI argues that it should be excused from paying the contested costs because they are "unreasonable." QDI Reply, at 3-5. However, "reasonableness" isn't the standard for recovery of Future Response Costs under the 1991 Decree, the 2011 Decree or the NCP. QDI attempts to derive "metrics" of reasonableness from various federal regulations. QDI SOP, at 5. However, the only federal regulation that is relevant to this dispute is the NCP. QDI argues that "the Agency is not at liberty under the NCP to incur expense that defies reasonable norms" (*id.*) but the term "reasonable norms" does not appear in the NCP. QDI has failed to meet its burden of establishing inconsistency with the NCP.

QDI's attempt to challenge EPA's costs as inconsistent with the NCP is misguided. Costs are neither consistent nor inconsistent with the NCP. See *United States v. Hardage*, 982 F.2d 1436, 1443 (10th Cir. 1992) ("Costs, by themselves, cannot be inconsistent with the NCP."). Rather, only a response action can be inconsistent with the NCP. *Hardage*, at 1443 ("The NCP regulates *choice of response actions*, not costs."); *United States v. Kramer*, 913 F.Supp. 848, 867 (D.N.J. 1995) ("[T]he only cost-related defense available to the defendants is that the remedy selected and performed is inconsistent with the NCP.").

In fact, EPA's costs are presumed to be reasonable so long as the underlying response action is not inconsistent with the NCP. *See United States v. Northeastern Pharmaceutical & Chemical Company*, 810 F.2d 726, 747-748 (8th Cir. 1986) (CERCLA § 107(a)(4)(A) states that EPA may recover all costs of removal and remedial action not inconsistent with the NCP and provides that all costs "incurred by the government that are not inconsistent with the NCP are conclusively presumed to be reasonable."); *United States v. American Cyanamid and Company.*, 786 F. Supp. 152, 162 (D.R.I. 1992) ("As long as the actions taken by the government fit within the NCP, the costs are presumed to be reasonable").

Moreover, EPA has the right to recover all of its costs and not merely those costs that QDI believes are "reasonable." *See Hardage*, 982 F.2d at 1443 ("CERCLA § 107(a)(4)(A) does not limit the government's recovery to 'all *reasonable* costs;' rather, it permits the government to recover "*all* costs of removal or remedial action"); *Kramer*, 913 F. Supp. at 867 ("[T]he NCP does not require that items of response costs be 'reasonable, 'proper,' or 'cost-effective.'"); *American Cyanamid*, 786 F. Supp. 152 at 161-162 ("Reasonableness of costs for cleanup is not a defense to recovery.").

QDI is also mistaken in relying on the Federal Acquisition Regulation ("FAR") in support of its "reasonable" costs argument. QDI SOP, at 5-7. To successfully challenge EPA's oversight costs, QDI must demonstrate that the underlying response action was inconsistent with the NCP. The FAR does not address whether a response action was or was not consistent with the NCP and therefore is inapposite. *See Kramer,* 913 F. Supp. at 857 n.13 ("Because we find...that EPA can recover response costs even if they are unreasonable, excessive, improper, duplicative, and not costs-effective, we do not need to consider the application of the FAR, so long as the costs were incurred in a removal or remedial action that is not inconsistent with the NCP.")

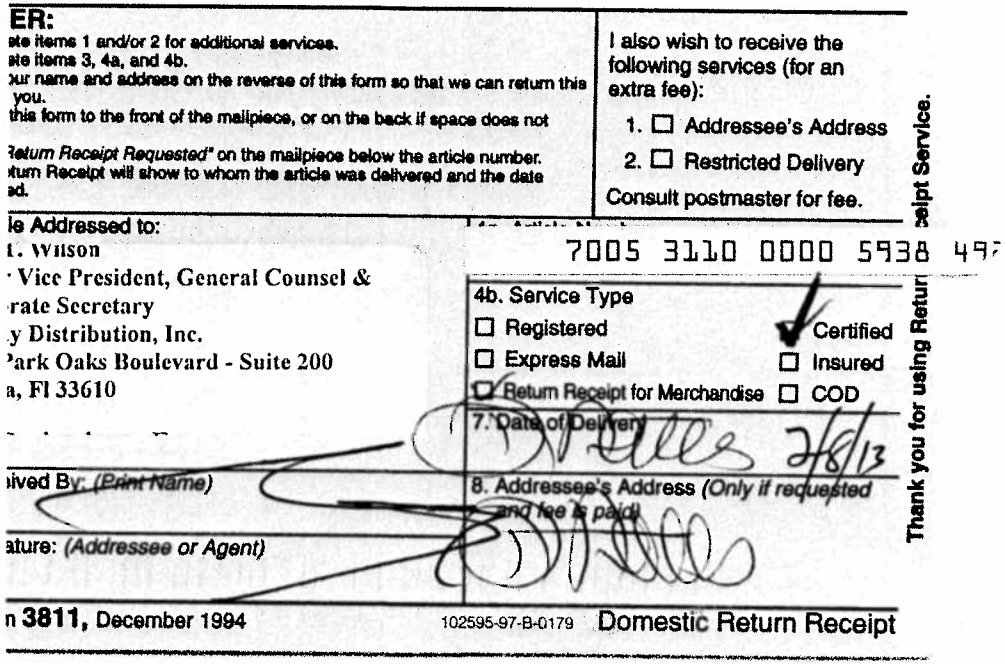
QDI has not identified, and in fact, makes no attempt to identify, any action taken by EPA that is inconsistent with the NCP. Moreover, QDI's claim that EPA's oversight costs are unreasonable is based on the opinions of its own contractors (QDI SOP, at 5 & 6) and ignores the history of its work at this Site. During our June 14, 2012 meeting, members of my staff indicated that this Site has and continues to require more than the typical amount of oversight. According to EPA, there has been a pattern of incomplete and poor quality work performed at the Site, often requiring extra vigilance and oversight in the field and repeated revisions of submissions of documents and other deliverables to EPA and its contractors for review and approval. Among the examples cited by EPA at the meeting was an incident in which heavy equipment was left stuck in wetlands at the Site for over 9 months. This incident caused an unexcused delayed in remediation of the wetlands.

Final Decision

It is the final decision of the Director of the Emergency and Remedial Response Division that, with respect to the OU1 Bill, QDI is required to submit payment of the amount in dispute, plus interest, pursuant to Section XIV of the OU1 Consent Decree. It is the final decision of the Director of the Emergency and Remedial Response Division that, with respect to the OU2/OU3 Bill, QDI is required to submit payment of the amount in dispute, plus interest, pursuant to Section XIX of the OU2/OU3 Consent Decree.

Sincerely,

Walter E. Mugdan, Director
Emergency & Remedial Response Division



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